Supreme Court, U. S.
FILED
OCT 6 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 1977
NO. 77-

77-525-

DOUGLAS SPICER

APPELLANT,

VS.

BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA, doing business as "MEDICAL COLLEGE OF ALABAMA" and "UNIVERSITY OF ALABAMA SCHOOL OF MEDICINE," a Constitutional Corporation, et al.

APPELLEES.

ON APPEAL FROM THE
SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

Edward Still
601 Title Building
Birmingham, AL 35203

Attorney for Appellant

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 1977
NO. 77-

DOUGLAS SPICER

APPELLANT

VS.

BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA, doing business as "MEDICAL COLLEGE OF ALABAMA" and "UNIVERSITY OF ALABAMA SCHOOL OF MEDICINE," a Constitutional Corporation, J. RUFUS BEALLE, WINTON M. BLOUNT, W. PAUL BRANN, ALBERT BREWER, LEROY BROWN, JOHN A. CADDELL, EHNEY A. CAMP JR., SAMUEL EARLE G. HOBBS, WILLIAM H. KEY, THOMAS S. LAWSON, DANIEL T. McCALL JR., JOHN T. OLIVER JR., ERIS F. PAUL, THOMAS D. RUSSELL, YETTA G. SAMFORD, JR., ERNEST STONE, ERNEST G. WILLIAMS, and their successors and assigns, individually and in their official capacities, jointly and severally,

APPELLEES.

ON APPEAL FROM THE
SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

JURISDICTIONAL STATEMENT

Appellant appeals from the decision of the Supreme Court of Alabama, entered on 8 July 1977, upholding the dismissal of Appellant's complaint.

OPINION BELOW

The opinion of the Supreme Court of Alabama is appended hereto at page 1a. It was officially reported at 347 So.2d 983 (Ala 1977). The judgment of the Jefferson County Circuit Court is appended at page 2a. It has not been officially reported.

JURISDICTION OF THE COURT

This Court has jurisdiction under 28 USC §1257(2) because a provision of the Alabama Constitution (granting the state sovereign immunity) has been drawn into question as repugnant to the Constition of the United States and the validity of the state provision has been upheld. The Supreme Court of Alabama issued its opinion on 8 July 1977. No motion for rehearing was made.

Despite the failure of the Alabama Supreme Court to address the federal constitutional question, this Court has jurisdiction because the issue was properly raised by Appellant. Chambers v. Mississippi, 410 US 284 (1973).

QUESTIONS PRESENTED

1. May a state court refuse to consider a claim that a state university rule is repugnant to the U.S. Constitution because of a state constitutional provision prohibiting suits against the State?

2. May a state university medical school deny admission to an academically qulaified applicant because the school's admissions committee has determined (without a hearing) that the applicant may not relate well to patients?

3. May a state university base admission to medical school on non-objectively measurable characteristics such as personality, character, and motivation?

4. May a state university medical school require an applicant to seek psychiatric help before it will reconsider his application, if there has been no determination that he needs such help?

CONSTITUTIONAL PROVISIONS

Alabama Constitution, Art. 1, §14 (1901): "That the State of Alabama shall never be a defendant in any court of law or equity."

Constitution of the United States, Art. VI, clause 2: "This Constitution and the laws of the United States which shall be made in pursuance thereof *** shall be the supreme law of the land; and the judges in every state shall be

bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

Constitution of the United States, Amend. XIV, Section 1: "*** No state shall *** deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

FACTS AND PROCEEDINGS BELOW

In 1969 the Appellant applied for admission to the University of Alabama School of Medicine and was told by Albert Farmer, member of the admissions committee, that upon passing the National Board of Medical Examiners examination, he would be admitted to the third year class (Comp., ¶8). Appellant took the examination and passed (Comp., ¶10). Then Farmer asked for letters of recommendation, which were provided (Comp. ¶¶13, 14). Apparently one of these letters falsely stated that the Appellant needed psychiatric treatment, because the admissions committee denied him admission but strongly advised him to seek psychiatric help. The committee said that they would reconsider the application "if this is successful" (Comp., ¶¶15-16).

Appellant sought treatment from a psychiatrist and a psychologist, each of whom pronounced plaintiff not to be mentally ill (Comp., ¶¶19-20). In 1970 Appellant reapplied but was again denied admission. The committee wrote

to him, "Although your intellectual abilities appear to be adequate, it is the opinion of the Committee that your total personal capabilities would not enable you to relate well to patients and this would prevent you from performing adequately at the clinical level" (Comp. ¶33).

The plaintiff's complaint alleged various state and federal causes of action. Counts III, IV, and V alleged the only federal claims. Counts III and IV alleged that the admissions committee had violated the Due Process Clause of the Constitution of the United States by refusing the Appellant admission on the basis of an unproved allegation of mental illness and the Equal Protection Clause by the use of arbitrary, capricious, unreasonable, and vague standards of admissions. The relief sought was admission to the Medical School. Count V sought a declaratory judgment against the consideration of personal and social traits and other non-intellectual characteristics in the admissions policy.

The Appellees moved to dismiss on grounds of sovereign immunity, the statute of limitations, and failure to state a claim under the state substantive statute invoked. The Jefferson County Circuit Court dismissed, without an opinion or statement as the grounds of dismissal (infra, page 2a).

The Supreme Court of Alabama affirmed in a short per curiam opinion (infra, page 1a) on the authority of Massler v. Troy State University, 343 So.2d 1 (Ala 1977), Ellison v. Abbott, 337 So.2d 756 (Ala 1976), and Cox v.

Board of Trustees of the University of Alabama, 161 Ala 639, 49 So. 814 (1909). Each of these cases was decided upon the sole grounds of Ala Const., Art. 1, §14, and did not discuss the statute of limitations or any other grounds raised by the Appellees in this case. Appellant had briefed and argued the non-applicability of the state's sovereign immunity to a federal cause of action.

THE QUESTIONS ARE SUBSTANTIAL

I. THE STATE COURTS HAVE VIOLATED THE SUPREMECY CLAUSE BY REFUSING TO HEAR A FEDERAL CLAIM IN STATE COURT.

A clearer constitutional principle than the supremacy of the federal constitution over state enactments is hard to find. This supremacy applies even to state constitutions, which must yield in the case of a conflict with the federal constitution. Reynolds v. Sims, 377 US 533, 584 (1964). Despite the principle that the federal constitution and laws are just as much a part of the laws of Alabama as those adopted by its Legislature, Clafin v. Houseman, 93 US 130 (1876), Hauenstein v. Lynham, 100 US 483 (1880), the Alabama courts refused to hear Appellant's federal law claim because of a state constitutional rule that the State of Alabama could not be made a defendant, Ala. Const., Art. 1, §14 (1901).

While the Alabama Supreme Court did not specifically hold that the Alabama Constitional provision applied to claims arising under the Fourteenth Amendment,

the Court clearly had before it the maintainability of such a claim. The Appellant's complaint explicitly relied upon the United States Constitution for three causes of action and he briefed and argued these points to the Supreme Court of Alabama. The Court's opinion speaks only to the sovereign immunity issue, implicitly holding that Ala. Const., Art. 1, §14, bars a suit against the University of Alabama, even if the suit is based upon the Constitution of the United States.

II. THE MEDICAL SCHOOL'S TREATMENT OF APPELLANT'S APPLICATION FOR ADMISSION VIOLATED BOTH THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTION.

The Appellant sought to enter the University of Alabama Medical School but was barred by the admissions committee's use of ex parte communications and its decision to require the Appellant to undergo "successful" phychiatric treatment as a condition of future consideration of his application. His second application was blocked by the committee's determination (apparently on the basis of communications Appellant never had an opportunity to rebut) that he would not relate well to patients.

"A State cannot exclude a person from *** any *** occupation in a manner or for reasons that contravene the Due Process of Equal Protection Clause of the Fourteenth Amendment." Schware v. Board of Bar Examiners of State of New Mexico, 353 US 232, 238-9 (1957). One

"manner" which violates the Due Process Clause is the lack of an opportunity to rebut charges or presumptions. Vlandis v. Kline, 412 US 441 (1973); Bell v. Burson, 402 US 535 (1971); Stanley v. Illinois, 405 US 645 (1972); Horowitz v. Board of Curators of University of Missouri, 538 F.2d 1317 (8th Cir. 1976), cert. granted 97 S.Ct. 1642 (1977).

> A party is entitled, of course, to know the issues on which a decision will turn and to be apprised of the facutal material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.

Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 419 US 281, 288 n.4 (1974). Appellant did not know the issues the committee wanted explored when it told him to go to a psychiatrist. It was not until he was refused admission for a second time that they disclosed that they had concluded he would not "relate well to patients."

Admittedly, a medical sshool may have more applicants than spaces available. To winnow this group, the State may only utilize a classification scheme "having a fair and substantial relation to the object" of the rule -- to produce knowledgeable doctors. Royster Guano Co. v. Virginia, 253 US 412, 415 (1920). The University's method of rejecting all

those whom it thought need psychiatric care or who had not "successfully" completed psychiatric evaluation does not meet this test, despite the University's invocation of its conclusion that Appellant Spicer would not "relate well to patients." Of course, not all doctors need to relate well to patients -- some become surgeons or researchers. Secondly, the Appellant has never been allowed to show that this supposed evidence of the University admissions committee is false or does not lead to the conclusions the committee drew from it. Just as Idaho could not eliminate women from the list of potential estate administrators, Reed v. Reed, 404 US 71 (1971); just as Georgia could not require grand jurors be freeholders, Turner v. Fouche, 396 US 346 (1970); just as Louisiana could not discount the status of illegitimate children in workman's compensation statutes, Weber v. Aetna Casualty & Surety Company, 406 US 164 (1972): neither may Alabama exclude those who have received psychiatric care from admission to its medical schools.

CONCLUSION

The State courts have violated their constitutional duty to uphold the Constitution of the United States, even in the face of a contrary state rule. The right Appellant sought to vindicate is important: rational and unbiased admission to a state university.

The Court should note probable jurisdiction and reverse the dismissal

of Appellant's complaint.

SUBMITTED BY:
Edward Still
601 Title Building
Birmingham, AL 35203

APPENDIX

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1977

Douglas Spicer

S.C. 2236 v.

The Board of Trustees of the University of Alabama d/b/a "Medical College of Alabama", etc.

Appeal from Jefferson Circuit Court

PER CURIAM.

Affirmed on the authority of Massler v. Troy State University, 343 So.2d 1 (Ala. 1977); Ellison v. Abbott, et al., 337 So.2d 756 (Ala. 1976); and Cox v. Board of Trustees of the University of Alabama, 161 Ala. 639, 49 So. 814 (1909).

AFFIRMED.

Torbert, C. J., Bloodworth, Maddox, Faulkner, Almon, Shores, and Embry, JJ., concur.

Jones, J., dissents.

JONES, JUSTICE, (Dissenting):

For the reasons as stated in my dissent in Ellison v. Abbott, et al., supra, I respectfully dissent.

MINUTE ENTRY

Present and Presiding,
J. Russell McElroy,
Judge of Circuit Court.

53289

Douglas Spicer)
)
vs.)
)
Board of Trustees of the)
University of Alabama, d/b/a)
"Medical College of Alabama",)
and "University of Alabama)
School of Medicine", a con-)
stitutional Corporation;)
J. Rufus Bealle; Winton M.)
Blount; W. Paul Brann; Albert)
Brewer; Leroy Brown; John A.)
Caddell; Ehney A. Camp, Jr.;)
Samuel Earle G. Hobbs;)
William H. Key; Thomas S.)
Lawson; Daniel T. McCall;)
Eris F. Paul; Thomas D.)
Russell; Yetta G. Samford,)
Jr.; Ernest Stone; Ernest G.)
Williams, et al)

8-3-76: The above and foregoing motions to dismiss were on this day duly and regulary heard by, and submitted to the court for judgment thereon. Ordered by the court that said submission be and it hereby is taken under advisement. McElroy, Judge.

8-10-76. The submission made on the

above and foregoing motions on August 3, 1976, having been duly considered by the court, it is ordered by the court that this action be, and it hereby is dismissed. McElroy, Judge.

11-1-76: The plaintiff's motion for reconsideration of the judgment (which motion was filed in the office of the Clerk of this court on August 20, 1976), was on October 29, 1976, duly heard by, and submitted to the court for judgment thereon. The said submission having been duly considered by the court, it is ordered and adjudged by the court that the said motion for reconsideration be, and it hereby is overruled, denied, disallowed and dismissed. McElroy, Judge.

[filed Oct. 3, 1977]

IN THE CIRCUIT COURT
FOR JEFFERSON COUNTY, ALABAMA

DOUGLAS SPICER,)
)
v.) CIVIL
) ACTION
THE BOARD OF TRUSTEES OF THE) NO.
UNIVERSITY OF ALABAMA, etc.,) 53829
et al.)

NOTICE OF APPEAL

Notice is hereby given that Douglas Spicer, appeallant above named, hereby appeals to the Supreme Court of the United States from the order affirming the judgment of dismissal by the Jef-

ferson County Circuit Court which order was entered by the Supreme Court of Alabama on 8 July 1977. Jurisdiction over this appeal is governed by 28 USC §1257(2).

SUBMITTED BY:

/s/ Edward Still
Edward Still
601 Title Building
Birmingham, AL 35203
205/322-1694

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that, prior to or immediately after filing a copy of the foregoing with the Court, I mailed or delivered a copy of the foregoing to the following:
Ina Leonard
UAB Legal Office
112 Mortimer Jordan Hall
Birmingham AL 35294

DATE: 30 Sept. 1977 Edward Still
OF COUNSEL

[filed Oct. 3, 1977]

THE SUPREME COURT OF ALABAMA
SC 2236

DOUGLAS SPICER,)
)
v.)
)
THE BOARD OF TRUSTEES OF THE)
UNIVERSITY OF ALABAMA, etc.,)
et al.)

NOTICE OF APPEAL

Notice is hereby given that Douglas Spicer, appeallant above named, hereby

appeals to the Supreme Court of the United States from the order affirming the judgment of dismissal by the Jefferson County Circuit Court which order was entered by this Court on 8 July 1977. Jurisdiction over this appeal is governed by 28 USC §1257(2).

SUBMITTED BY:

/s/ Edward Still
Edward Still
601 Title Building
Birmingham, AL 35203
205/322-1694

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that, prior to or immediately after filing a copy of the foregoing with the Court, I mailed or delivered a copy of the foregoing to the following:
Ina Leonard
UAB Legal Office
112 Mortimer Jordan Hall
Birmingham AL 35294

DATE: 30 Sept. 1977 Edward Still
OF COUNSEL

Supreme Court, U. S.
FILED
DEC 14 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 1977
NO. 77-525

DOUGLAS SPICER

APPELLANT

VS.

BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA, doing business as "MEDICAL COLLEGE OF ALABAMA" and "UNIVERSITY OF ALABAMA SCHOOL OF MEDICINE," a Constitutional Corporation, et al.

APPELLEES.

ON APPEAL FROM THE
SUPREME COURT OF ALABAMA

MOTION TO DISMISS APPEAL

Ina Leonard
112 Mortimer Jordan Hall
University Station
Birmingham, Alabama 35203

Attorney for Appellees

IN THE SUPREME COURT
OF THE UNITED STATES
October Term 1977
NO. 77-525

DOUGLAS SPICER

APPELLANT

VS.

BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA, doing business as "MEDICAL COLLEGE OF ALABAMA" and "UNIVERSITY OF ALABAMA SCHOOL OF MEDICINE," a Constitutional Corporation, J. RUFUS BEALLE, WINTON M. BLOUNT, W. PAUL BRANN, ALBERT BREWER, LEROY BROWN, JOHN A. CADDELL, EHNEY A. CAMP, JR., SAMUEL EARLE G. HOBBS, WILLIAM H. KEY, THOMAS S. LAWSON, DANIEL T. McCALL, JR., JOHN T. OLIVER, JR., ERIS F. PAUL, THOMAS D. RUSSELL, YETTA G. SAMFORD, JR., ERNEST STONE, ERNEST G. WILLIAMS, and their successors and assigns, individually and in their official capacities, jointly and severally,

APPELLEES.

ON APPEAL FROM THE
SUPREME COURT OF ALABAMA

MOTION TO DISMISS APPEAL

MOTION TO DISMISS APPEAL

Appellees move the Court to dismiss the appeal herein on the following grounds:

1. The Court is without jurisdiction because appellant's suit did not draw into question the validity of Art. 1, §14 of the Alabama Constitution of 1901 as required by 28 USC §1257(2).

2. The question of whether a state court may refuse to consider federal constitutional claims against a State because of the sovereign immunity of the State provided in the state constitution was not properly presented in the state courts.

3. There existed an adequate state ground for dismissal of the suit appealed herein.

STATEMENT

Appellant filed suit in the District Court of Jefferson County, Alabama, against The Board of Trustees of the University of Alabama, a corporation, and seventeen individual officers and members of the board of trustees of the corporation on June 1, 1976, alleging that the denial of his request for admission to medical school was a deprivation of equal protection and due process of law guaranteed by the Fourteenth Amendment to the United States Constitution. The corporation filed a motion to dismiss the complaint on the grounds that it was a suit against the state of Alabama barred by the constitution and law thereof and that each and every count thereof was barred by the applicable statute of limitations. Individual appellees moved for dismissal of the

federal claims against them on the grounds that they were barred by the applicable statute of limitations and by the dismissal of a complaint arising from the same set of facts, alleging substantially the same cause of action, although naming as defendants different agents of the corporate defendant, by the United States District Court for the Northern District of Alabama, a court of concurrent jurisdiction. Motions to dismiss were granted, the complaint being dismissed as to all appellees. A motion by appellant for reconsideration of the judgment was denied by the circuit court. The Supreme Court of Alabama affirmed the judgment of the circuit court, and this case is now on direct appeal from that judgment to this Court.

ARGUMENT

1. This case is not within the appeal jurisdiction of this Court.

For jurisdiction of this appeal appellant relies upon 28 USC §1257(2), asserting that the validity of Art. 1, §14 of the Alabama Constitution (1901) has been drawn into question as repugnant to the Constitution of the United States and that the validity of the state provision was upheld. (J.S. 1.) While it is difficult to isolate the requirement of the validity of a state statute having been "drawn into question" from the issues of whether questions have been properly raised, it should be emphasized that the validity of the Art. 1, §14 of the Alabama Constitution was never drawn into question by explicit protest of appellant that reliance on that state constitutional provision, resulting in an affirmation of the dismissal of the suit, was prohibited by the supremacy clause of the federal constitution or any other federal law.

2. The Question Which the Appellant Seeks to Have Reviewed was not Properly Raised and Preserved in the Proceedings Below.

Appellant lists four questions for review in the Jurisdictional Statement. (J.S. 2.) However, all but the first are questions concerning the merits of appellant's case, which have never been reached by the state courts, as is clearly established by the fact that the suit was dismissed upon motions of appellees and that said dismissal was affirmed by the Supreme Court of Alabama. Any review and decision by this Court on those questions, absent factual development and judgment thereon in a hearing on the merits, would constitute an advisory opinion by this Court.

Should this Court note jurisdiction in this case, the one question presented for review is: May a state court refuse to consider a claim that a state university rule is repugnant to the U.S. Constitution because of a state constitutional provision prohibiting suits against the State? It is not at all clear from the opinion of the Supreme Court of Alabama that the court affirmed the dismissal of appellant's federal claims on the basis of the state constitutional provision. An examination of the cases cited in the opinion of the Supreme Court of Alabama (J.S. 1a) shows that those cases stand primarily for the proposition that state universities in Alabama are protected by the sovereign immunity of the state. Appellant's complaint alleged several state and federal causes of action. (J.S. 4.) Appellees' motions to dismiss stated several grounds for dismissal, including that the complaint was barred by the applicable statutes of limitation. (J.S. 4.) It is quite possible that the ground stated for affirming the dismissal ran only to

the state claims. It is certain that the dismissal of the claims against the individual defendants was not based on the sovereign immunity of the state, as such a claim was not available to those individuals and was not raised by them.

Presentation of the federal question in a manner requiring decision in the state courts is essential to sustain jurisdiction of this appeal. Bailey v. Anderson, 326 U.S. 203, 206-207 (1945). Further, when the highest state court has not delivered an opinion on the federal question, "it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." Street v. New York, 394 U.S. 576, 580 (1969). Appellant does not assert that the federal question was raised in the trial court. The Motion to Reconsider the Judgment, filed after the sovereign immunity bar had been raised, failed to raise the federal question. Appellant states only that the non-applicability of the state's sovereign immunity to a federal cause of action was briefed and argued to the Supreme Court of Alabama. (J.S. 5.) In fact, the question presented in appellant's brief was: Is a claim against the University of Alabama Board of Trustees for declaratory relief barred by the Alabama Constitution? The argument on that question was entitled: Insofar as the complaint demands equitable relief against the defendant corporation, it is not a claim against the State forbidden by the Constitution of Alabama. Appellees contend that the question of whether the reliance on a state constitutional provision to refuse consideration of federal claims in state court is itself repugnant to the federal constitution was raised for the first time in the appeal to this Court, and the appeal should not lie. Cardinale v. State of Louisiana, 394 U.S. 437 (1969).

3. There was an adequate state ground for dismissal of appellant's complaint.

As the opinion of the Supreme Court of Alabama refers only to cases concerning the sovereign immunity of state colleges and universities, one might infer that dismissal of the federal claims against the state rested on that principle. That inference is not permissible, however, with regard to the claims against the individual appellees, as they did not raise sovereign immunity as a ground for dismissal.

Appellees contend that one ground relied upon by the individuals and the corporation, the bar to suit created by the applicable statute of limitations, was sufficient to require dismissal. Appellant was refused admission to medical school in 1969 and 1970. (J.S. 3,4.) Suit, alleging that those rejections violated appellant's rights to equal protection and due process of law guaranteed by the Fourteenth Amendment to the United States Constitution, was filed in 1976. In Alabama actions for "injury to the person or rights of another not arising from contract and not specifically enumerated ..." must be commenced within one year. Code of Ala. 1975, §6-239(5). It has been held consistently by the federal courts in Alabama, where federal constitutional claims are usually heard, that actions for deprivation of civil rights are subject to the general one-year statute of limitations in Alabama. Boshell v. Alabama Mental Health Board, 473 F.2d 1369 (5th Cir. 1973); Beard v. Stevens, 372 F.2d 685 (5th Cir. 1967); Ripps v. Dobbs House, Inc., 366 F.Supp. 205 (N.D. Ala. 1973).

While appellees cannot urge with certainty that the state courts relied on this ground and disposed of the federal claims accordingly, the clear existence of the statute of limitations bar permits such an inference, which is more logical, particularly in reference to claims against the individual appellees, than is one that the Supreme Court of Alabama relied solely on the sovereign immunity of the state to support dismissal of all claims by appellant.

CONCLUSION

For the foregoing reasons, the appeal herein should be dismissed.

Respectfully submitted,

Ina Leonard
112 Mortimer Jordan Hall
University Station
Birmingham, Alabama 35294

December, 1977.